

UNDER SEAL PILOT PROGRAM

INSTRUCTIONS TO ATTORNEYS FOR FILING UNDER SEAL DOCUMENTS

I. General Information Regarding Applications to File Documents Under Seal

In a civil case, there is a strong presumption of access to documents in civil cases. See Foltz v. State Farm Mut. Auto. Ins. Co., 331 F.3d 1122, 1135 (9th Cir. 2003). For each document or other type of information sought to be filed under seal, the party seeking protection must identify and discuss the factual and legal justification for the court to find “good cause.” “For good cause to exist, the party seeking protection bears the burden of showing specific prejudice or harm will result if no protective order is granted.” Phillips ex rel. Estates of Byrd v. Gen. Motors Corp., 307 F.3d 1206, 1210-11 (9th Cir. 2002); see Foltz, 331 F.3d at 1130 (“A party asserting good cause bears the burden, for each particular document it seeks to protect, of showing that specific prejudice or harm will result if no protective order is granted.”). “Compelling reasons,” which amount to more than good cause, must be shown for sealing documents used in dispositive motions and at trial. See Kamakana v. City & Cnty. of Honolulu, 447 F.3d 1172, 1178-79 (9th Cir. 2006).

An application to file documents under seal must meet the requirements of Local Rule 79-5. Documents that are not confidential or privileged in their entirety should not be filed under seal if the confidential portions can be redacted and filed separately with a reasonable amount of effort. The parties should file both documents – a complete version of the pleadings and document(s) under seal, and a redacted version for public viewing – omitting only such portions as the court has ordered may be filed under seal.

Sealing must be justified for each individual item to be sealed or redacted. Blanket claims of confidentiality are not allowed and will result in a denial of the application to seal. Counsel are strongly encouraged to consider carefully whether sealing or redaction is required for a given piece of evidence or argument. The inclusion of meritless requests to seal or redact documents may result in the complete rejection of an application to seal.

The title of the pleading will be placed on the public docket entry. For example: “Declaration of John Doe, Exhibit A.” If approved, the document itself will be sealed and not viewable by the public, but the captioned title will be viewable.

II. Applications to Seal Only Certain Documents (This Does Not Include the Sealing of the Application and Order)

1. Electronically file the application to seal, the declaration giving notice and the proof of service.
2. Attach as a separate document a proposed order to the electronically filed application (use the standard procedure for filing an application with a proposed order).

3. Indicate which of the three following actions will be taken if the application is denied:
 - A. The documents should be returned to counsel;
 - B. The clerk will destroy the chambers copy of the document(s); or
 - C. Counsel will publicly file the document(s) for consideration by the Court.
4. After electronically filing the application, send an e-mail to FMO_Chambers@cacd.uscourts.gov with an attachment containing: (A) a searchable Adobe PDF version of the application to seal; (B) a Word or Word Perfect version of the proposed order granting/denying the application or stipulation; and (C) a searchable Adobe PDF of the document(s) to be filed under seal with a caption page clearly marked "UNDER SEAL." The e-mail should have the case number, plus the words "UNDER SEAL REQUEST" in the subject line.
5. A mandatory chambers copy of the e-filed documents listed above shall be delivered to the drop box outside chambers **no later than noon the following business day**. All mandatory chambers copies shall fully comply with the document formatting requirements of Local Rule 11, including the "backing" requirements of Local Rule 11-4. Each document must be labeled prominently, "Mandatory Chambers Copy," on the front page and the notice of electronic filing shall be attached to the back of the document.

III. Applications to Seal Where the Application and Order Should Also Be Sealed

1. Electronically file a NOTICE OF MANUAL FILING indicating that the following have been submitted to the court: (A) an application to seal; (B) a declaration giving notice; (C) a proof of service; (D) a proposed order; and (E) the documents sought to be placed under seal.
2. Send an email to FMO_Chambers@cacd.uscourts.gov with an attachment containing (A) a searchable Adobe PDF version of the application to seal with supporting documents; (B) a Word or Word Perfect version of the proposed order to seal the application (including the proposed action to be taken if the application is denied; (C) the proposed order granting/denying application or stipulation, etc.; and (D) a searchable Adobe PDF of the document(s) sought to be filed under seal with a caption page clearly marked "UNDER SEAL." The e-mail should have the case number, plus the words "UNDER SEAL REQUEST" in the subject line.

3. A mandatory chambers copy of the e-filed documents listed above shall be delivered to the drop box outside chambers **no later than noon the following business day**. All mandatory chambers copies shall fully comply with the document formatting requirements of Local Rule 11, including the “backing” requirements of Local Rule 11-4. Each document must be labeled prominently, “Mandatory Chambers Copy,” on the front page and the notice of electronic filing shall be attached to the back of the document.